

1 | PATRICK D. ROBBINS (CABN 152288)  
2 | Attorney for the United States  
2 | Acting Under Authority Conferred by 28 U.S.C. § 515

3 MARTHA BOERSCH (CABN 126569)  
Chief, Criminal Division

5 ROBERT S. LEACH (CABN 196191)  
ADAM A. REEVES (NYBN 2363877)  
KRISTINA N. GREEN (NYBN 5226204)  
6 ZACHARY G.F. ABRAHAMSON (CABN 310951)  
Assistant United States Attorneys

450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102-3495  
Telephone: (415) 436-7014  
Fax: (415) 436-7234  
Email: Robert.Leach@usdoj.gov

Attorneys for United States of America

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

The government respectfully submits its Response to the Court's Proposed Jury Instructions filed May 27, 2024 [ECF No. 524-1].

23        **Page 20 / Wire Fraud instruction.** In light of the Ninth Circuit’s recent holding in *United States*  
24        *v. Milheiser*, 98 F.4th 935, 944 (9th Cir. 2024), the government recommends adding the following  
25        sentence to the first element of wire fraud, beginning after the first sentence which ends with “omitted  
26        facts” on line 11: “The false or fraudulent pretenses, representations, or promises must go to the  
27        nature of the bargain, for example, to price or quality or otherwise to essential aspects of the  
transaction.”

1       Page 23 / Wire Fraud – Good Faith instruction. The government objects. This instruction is  
2 not necessary given the definition of intent to defraud. To the extent the Court gives a good faith  
3 instruction, the government recommends it more closely align to the good faith instruction the Court  
4 gave in *United States v. Reyes*, CR 06-556 CRB (N.D. Cal. Mar. 23, 2010), ECF No. 1158, which  
5 reads:

6       It is the government's burden to prove beyond a reasonable doubt that Mr. Reyes acted  
7 with an intent to commit the offenses charged. Good faith on the part of Mr. Reyes is  
8 inconsistent with a finding that Mr. Reyes knowingly or willfully committed any of the  
9 alleged offenses. Thus, if the evidence in the case leaves you with a reasonable doubt  
10 about whether Mr. Reyes acted with intent to commit the crime alleged in a particular  
11 count, or instead whether he possessed a good-faith belief that the alleged false or  
12 misleading statements were in fact accurate, you must find Mr. Reyes not guilty on that  
13 count.

14      Alternatively, the government proposes the following changes to the proposed instruction:

15      The good faith of defendant is ~~a complete defense to the charge of wire fraud in Counts~~  
16 ~~Two through Fifteen of the indictment because good faith is, simply,~~ inconsistent with the intent  
17 to defraud ~~alleged in those charges.~~

18      A person who acts, or causes another to act, on an honestly held belief or opinion ~~is not~~  
19 ~~punishable under this statute~~ does not act with intent to defraud merely because the belief or opinion  
20 turns out to be inaccurate, incorrect, or wrong. ~~An honest mistake in judgment or an error in~~  
21 ~~management does not rise to the level of intent to defraud.~~

22      A defendant does not act in “good faith” if, even though he honestly holds a certain  
23 opinion or belief, that defendant also knowingly makes material false or fraudulent pretenses,  
24 representations, or promises to others.

25      ~~While the term “good faith” has no precise definition, it means, among other things, a~~  
26 ~~belief or opinion honestly held, an absence of malice or ill will, and an intention to avoid taking~~  
27 ~~unfair advantage of another.~~

28      In determining whether or not the government has proven that the defendant acted with  
29 an intent to defraud or whether the defendant acted in good faith, the jury must consider all of the  
30 evidence in the case bearing on the defendant’s state of mind.

31      ~~The burden of proving good faith does not rest with the defendant because the defendant~~  
32 ~~does not have any obligation to prove anything in this case.~~ It is the government’s burden to prove to  
33 you, beyond a reasonable doubt, that defendant acted with the intent to defraud.

34      Page 26 / Wire Fraud – Respondeat Superior instruction. The government objects. This is  
35 instruction is not necessary given the definition of intent to defraud. Alternatively, the government

1 requests the Court change the word “merely” to “solely” and add a sentence: “You may consider Dr.  
2 Lynch’s position at Autonomy in connection with all of the evidence in the case.”

Page 30 / “Willfully” – Defined instruction. The government objects. The term willfully is not present in 18 U.S.C. §1349. To the extent the Court decides to give the instruction, it should not include any language after the second sentence ending “mistake.” The remainder is repetitive.

DATED: May 28, 2024

Respectfully submitted,

PATRICK D. ROBBINS  
Attorney for the United States, Acting Under  
Authority Conferred by 28 U.S.C. § 515

/s/  
ROBERT S. LEACH  
ADAM A. REEVES  
KRISTINA GREEN  
ZACHARY G.F. ABRAHAMSON  
Assistant United States Attorney